

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A24-0541**

Albany Ready Mix, Inc.,  
Appellant,

vs.

Craig Reinke, et al.,  
Respondents.

**Filed December 16, 2024  
Affirmed  
Schmidt, Judge**

Stearns County District Court  
File No. 73-CV-22-5466

Sarah R. Jewell, River Valley Law, P.A., Waite Park, Minnesota (for appellant)

Craig G. Reinke, Michelle M. Reinke, Richmond, Minnesota (pro se respondents)

Considered and decided by Smith, Tracy M., Presiding Judge; Frisch, Judge; and  
Schmidt, Judge.

**NONPRECEDENTIAL OPINION**

**SCHMIDT**, Judge

In this appeal from a final judgment, appellant Albany Ready Mix, Inc. argues the district court abused its discretion when it imposed sanctions against Albany Ready Mix's counsel. Because we conclude that respondents Craig and Michelle Reinke complied with the safe harbor provision of Minn. R. Civ. P. 11.03 and because the district court did not abuse its discretion by imposing sanctions, we affirm.

## FACTS

Albany Ready Mix provides concrete for residential and commercial projects. The Reinkes own real property in Richmond, Minnesota. In June 2021, Craig Reinke called Albany Ready Mix about a new concrete driveway. Trent Pauls—an independent contractor working for Albany Ready Mix—answered the call. Pauls stated that Albany Ready Mix was too busy to pour the driveway, but he said that he pours concrete as a side job and offered to do so for the Reinkes. Pauls measured the driveway and texted Craig Reinke with a bid of \$33,000. Pauls claims that at some later point in time the project doubled in size. The Reinkes claim they only agreed to pay \$3,000 extra for more concrete by a shed and for an area of the driveway that Pauls forgot to include in his initial estimate.

From July 7–15, 2021, Pauls and his team poured the concrete for the driveway. Pauls used concrete supplied by Albany Ready Mix. Craig Reinke was unhappy with the work after it was completed. Pauls offered to acid stain the driveway for an additional cost and Craig Reinke agreed. The Reinkes and Pauls dispute the quality of the staining work. Pauls claims he used an Albany Ready Mix company credit card to purchase the stain and other materials. Pauls also claims that the Albany Ready Mix invoices initially had both his name and Craig Reinke's name because he planned to give the Reinkes the contractor price, but that he (Pauls) removed his name and the contractor price after the dispute escalated.

On November 13, 2021, Jeff Kostreba—the owner of Albany Ready Mix—visited Craig Reinke and gave him a prelien notice. Kostreba served and filed for a record of a mechanic's lien statement on December 22, 2021. Albany Ready Mix later sued the

Reinkes to foreclose the mechanic's lien and for breach of contract, unjust enrichment, quantum meruit, and account stated. The Reinkes counterclaimed for slander of title and civil conspiracy. The Reinkes also added Pauls as a third-party defendant.

On July 18, 2022, the Reinkes' counsel served Albany Ready Mix with a motion for sanctions under Minn. R. Civ. P. 11.03. On November 4, 2022, the Reinkes filed the rule 11 motion for sanctions and a motion for summary judgment. After a hearing, the district court granted summary judgment for the account stated claim, but otherwise denied the summary judgment motion as premature and reserved ruling on the rule 11 motion.

In August 2023, after further discovery, the Reinkes filed both a second motion for summary judgment and a second motion for rule 11 sanctions. After Pauls filed for bankruptcy, the district court dismissed him from the case, and the bankruptcy resulted in a stay of the Reinkes' civil conspiracy claim against Albany Ready Mix. After a hearing, the district court dismissed all of Albany Ready Mix's claims and granted \$5,000 in attorney fees as sanctions against Albany Ready Mix's counsel. The district court later held a bench trial on the Reinkes' slander of title claim and found the Reinkes failed to prove the claim by a preponderance of the evidence.

Albany Ready Mix appeals.

## DECISION

### **I. The district court acted within its discretion in considering the first rule 11 motion that complied with the safe harbor provision.**

Albany Ready Mix argues the Reinkes failed to follow the rule 11 safe harbor provision before filing the first motion for sanctions. A rule 11 motion for sanctions must be served on the other party, “but shall not be filed with or presented to the court unless, within 21 days after service of the motion . . . the challenged document, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.” Minn. R. Civ. P. 11.03(a)(1). A court abuses its discretion by imposing sanctions if the moving party failed to serve the motion 21 days before filing it. *Gibson v. Coldwell Banker Burnet*, 659 N.W.2d 782, 790 (Minn. App. 2003).

The district court found that the Reinkes properly complied with the safe harbor provision for the rule 11 motion served on July 18, 2022, and filed with the court on November 4, 2022. The district court initially reserved ruling on the motion to allow for discovery. After discovery occurred, the district court considered the Reinkes’ initial rule 11 motion and found that Albany Ready Mix “had clear notice that the [c]ourt would consider [r]ule 11 sanctions upon a renewed motion[.]” The Reinkes filed a second rule 11 sanctions motion on August 10, 2023, which had not been served 21 days before it was filed. The district court appropriately compared the two motions and expressly refused to consider any sanctionable conduct that had not been raised in the first motion.

Because the district court limited its review to the issues presented in the first motion, we conclude that the court did not abuse its discretion by imposing sanctions.

## **II. The district court acted within its discretion in imposing sanctions.**

### **A. The district court did not abuse its discretion in concluding Albany Ready Mix’s counsel did not have a reasonable basis for pursuing the claims.**

When filing or submitting documents to the court, Minnesota requires an attorney to certify that “to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:” (1) the document is not presented to the court for an improper purpose; (2) the “legal contentions therein are warranted by existing law”; and (3) the allegations and factual contentions have—or will after reasonable discovery have—evidentiary support. Minn. R. Civ. P. 11.02. A district court may sanction an attorney for violating one of the above provisions. Minn. R. Civ. P. 11.03. “Sanctions should not be imposed when counsel has an objectively reasonable basis for pursuing a factual or legal claim or when a competent attorney could form a reasonable belief a pleading is well-grounded in fact and law.” *Leonard v. Nw. Airlines, Inc.*, 605 N.W.2d 425, 432 (Minn. App. 2000) (quotation omitted), *rev. denied* (Minn. Apr. 18, 2000). We review a court’s award of sanctions for an abuse of discretion. *Id.*

#### **1. The existence of a valid oral contract.**

Albany Ready Mix argues the district court abused its discretion by imposing sanctions because its counsel had an objectively reasonable belief that it had a valid oral contract with the Reinkes. The district court imposed sanctions after finding that Albany Ready Mix pursued its claim for breach of an oral contract without any objectively reasonable basis to support the claim.

After discovery closed, Albany Ready Mix had no evidence of any communication between Albany Ready Mix and the Reinkes about ordering concrete. Discovery revealed that Pauls operated as an independent contractor on the Reinkes' project and that he ordered the concrete. The court sanctioned Albany Ready Mix's counsel for continuing to pursue the "unfounded" breach of oral contract claim after learning these facts in discovery.

Albany Ready Mix places great weight on the district court's finding that Albany Ready Mix undisputedly provided concrete and received no payment. But that finding does not prove the existence of a contract between Albany Ready Mix and the Reinkes. At best, Albany Ready Mix had a contract with Pauls. "[A]n owner is not liable for work or materials furnished [to] a contractor when he is not a party to the contract between the contractor and the materialman." *Duluth Lumber & Plywood Co. v. Delta Dev., Inc.*, 281 N.W.2d 377, 384 (Minn. 1979). Without evidence of a contract between Albany Ready Mix and the Reinkes, the fact that the concrete was delivered and not paid for does not provide evidence for a breach of contract claim against the Reinkes.<sup>1</sup>

Because Albany Ready Mix continued to pursue its breach of an oral contract claim against the Reinkes without an objectively reasonable basis to support it, we conclude the district court did not abuse its discretion by imposing sanctions.

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<sup>1</sup> Albany Ready Mix argues it had an objectively reasonable basis to pursue the oral contract claim based on a theory of partial performance, which provides an exception to the oral agreement being invalid under the statute of frauds. But Albany Ready Mix did not present this theory to the district court. We will not consider whether the district court abused its discretion based on an issue that Albany Ready Mix failed to present to it. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

**2. The existence of a valid mechanic's lien that satisfied the prelien notice requirement or a valid exception.**

Albany Ready Mix argues no prelien notice was required because its counsel had an objectively reasonable belief that it contracted directly with the Reinkes. The district court properly rejected this argument for at least three reasons.

First, as noted above, Albany Ready Mix had no objectively reasonable basis to believe a valid contract existed between Albany Ready Mix and the Reinkes. As the district court found, Pauls acted as an independent contractor, ordered the concrete, and purchased other materials on his own. Once Albany Ready Mix's counsel discovered these facts, she no longer could have an objectively reasonable belief that a contract existed or that Albany Ready Mix qualified for the prelien notice exception for general contractors, assuming it otherwise could have. Minn. Stat. § 514.011, subd. 1 (2022).

Second, the district court found that a statutory exception to the prelien notice, Minn. Stat. § 514.011, subd. 4a (2022), did not apply because no evidence in the record supported “a conclusion that the Reinkes were acting as their own general contractor[.]” As the claimant of the exception, Albany Ready Mix bore the burden to prove that the Reinkes acted as their own general contractor and therefore no prelien notice was required. *Lighthouse Mgmt. Inc. v. Oberg Fam. Farms*, 966 N.W.2d 29, 42 (Minn. App. 2021), *rev. denied* (Minn. Nov. 16, 2021). Albany Ready Mix failed to meet its burden.

Finally, Albany Ready Mix's attempt to serve the required prelien notice was untimely.<sup>2</sup> The first shipment of concrete arrived on July 7, 2021. Albany Ready Mix

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<sup>2</sup> On appeal, Albany Ready Mix maintained that no prelien notice was required because it

served the prelien notice on November 13, 2021, well past the timeframe for serving a prelien notice if Albany Ready Mix did not enter into a direct contract with the Reinkes. *See* Minn. Stat. § 514.011, subds. 1-2 (2022). The district court’s finding was not clearly erroneous and its decision to impose sanctions was not an abuse of discretion.

**B. The district court had discretion to impose sanctions without first finding counsel acted with subjective bad faith.**

Albany Ready Mix appears to argue that the district court’s failure to find its counsel acted in bad faith means the sanctions award should be reversed. But “the objective standard under Rule 11 permits the imposition of sanctions for the filing of a meritless claim, without a finding of subjective bad faith.” *Peterson v. Hinz*, 605 N.W.2d 414, 417 (Minn. App. 2000), *rev. denied* (Minn. Apr. 18, 2000). A district court retains wide discretion to impose sanctions even without an express finding of bad faith. *Id.* Thus, the district court here did not need any bad faith finding in order to impose sanctions.

When imposing sanctions the district court found:

A reasonable re-evaluation of Albany Ready Mix’s claims and of the evidence should have suggested its asserted claims against the Reinkes were unsupported by the evidence. The Court is especially troubled by counsel’s maintenance of this suit against the Reinkes based on repeated empty assertions that there was a contract between the Reinkes and Albany Ready Mix, and insistence on more discovery without any apparent indication that any discoverable evidence exists to support Albany Ready Mix’s claims.

The court acted within its discretion by imposing sanctions without a finding of bad faith.

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was not a subcontractor and, instead, contracted directly with the homeowner. We address this third reason only because the record reflects that Albany Ready Mix did attempt to serve a prelien notice, albeit an untimely one.

**C. The imposition of sanctions did not conflict with the district court's determination on the Reinkes' slander of title claim.**

Albany Ready Mix argues that the district court should have vacated the sanctions order after finding that the Reinkes failed to prove their slander of title claim at trial.<sup>3</sup> Albany Ready Mix cites *Thuma v. Kroschel* for the proposition that it is an abuse of discretion for the district court to impose sanctions after trial when the summary judgment issues mirror the basis for imposing sanctions. 506 N.W.2d 14, 21 (Minn. App. 1993), *rev. denied* (Minn. Dec. 14, 1993). But *Thuma* is distinguishable. In *Thuma*, we held that sanctions were inappropriate because a party “who survived a motion to dismiss and summary judgment, had no reason to believe that the court deemed the claim frivolous or meritless.” *Id.* Unlike in *Thuma*, all of Albany Ready Mix's claims were dismissed on summary judgment because the claims lacked evidentiary support.

The district court also distinguished the slander of title and the sanctions issues. For slander of title, the court considered whether Albany Ready Mix acted with malice when it filed the initial mechanic's lien. Whereas for sanctions, the court considered the attorney's knowledge after discovery closed. The Reinkes' failure to prove that Albany Ready Mix acted with malice when filing the mechanic's lien had no bearing on the attorney pursuing claims that had no support in the evidence produced during discovery.

**Affirmed.**

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<sup>3</sup> We reject the Reinkes' contention that Albany Ready Mix forfeited this argument by failing to raise it with the district court. The order including the slander of title claim is part of the record on appeal and therefore can be considered by this court. See *Plowman v. Copeland, Buhl & Co.*, 261 N.W.2d 581, 583 (Minn. 1977); Minn. R. Civ. App. P. 103.04, 110.01.